

discretion of the court and the principles of equity if—

“(A) the mark or trade name that is likely to cause dilution by blurring or dilution by tarnishment was first used in commerce by the person against whom the injunction is sought after the date of enactment of the Trademark Dilution Revision Act of 2006; and

“(B) in a claim arising under this subsection—

“(i) by reason of dilution by blurring, the person against whom the injunction is sought willfully intended to trade on the recognition of the famous mark; or

“(ii) by reason of dilution by tarnishment, the person against whom the injunction is sought willfully intended to harm the reputation of the famous mark.

“(6) OWNERSHIP OF VALID REGISTRATION A COMPLETE BAR TO ACTION.—The ownership by a person of a valid registration under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register under this Act shall be a complete bar to an action against that person, with respect to that mark, that—

“(A)(i) is brought by another person under the common law or a statute of a State; and

“(ii) seeks to prevent dilution by blurring or dilution by tarnishment; or

“(B) asserts any claim of actual or likely damage or harm to the distinctiveness or reputation of a mark, label, or form of advertisement.

“(7) SAVINGS CLAUSE.—Nothing in this subsection shall be construed to impair, modify, or supersede the applicability of the patent laws of the United States.”; and

(2) in subsection (d)(1)(B)(i)(IX), by striking “(c)(1) of section 43” and inserting “(c)”.

SEC. 3. CONFORMING AMENDMENTS.

(a) MARKS REGISTRABLE ON THE PRINCIPAL REGISTER.—Section 2(f) of the Trademark Act of 1946 (15 U.S.C. 1052(f)) is amended—

(1) by striking the last two sentences; and

(2) by adding at the end the following: “A mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 43(c), may be refused registration only pursuant to a proceeding brought under section 13. A registration for a mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 43(c), may be canceled pursuant to a proceeding brought under either section 14 or section 24.”.

(b) OPPOSITION.—Section 13(a) of the Trademark Act of 1946 (15 U.S.C. 1063(a)) is amended in the first sentence by striking “as a result of dilution” and inserting “the registration of any mark which would be likely to cause dilution by blurring or dilution by tarnishment”.

(c) CANCELLATION.—Section 14 of the Trademark Act of 1946 (15 U.S.C. 1064) is amended, in the matter preceding paragraph (1) by striking “, including as a result of dilution under section 43(c),” and inserting “, including as a result of a likelihood of dilution by blurring or dilution by tarnishment under section 43(c),”.

(d) MARKS FOR THE SUPPLEMENTAL REGISTER.—The second sentence of section 24 of the Trademark Act of 1946 (15 U.S.C. 1092) is amended to read as follows:

“Whenever any person believes that such person is or will be damaged by the registration of a mark on the supplemental register—

“(1) for which the effective filing date is after the date on which such person's mark became famous and which would be likely to cause dilution by blurring or dilution by tarnishment under section 43(c); or

“(2) on grounds other than dilution by blurring or dilution by tarnishment, such person may at any time, upon payment of the prescribed fee and the filing of a petition stating the ground therefor, apply to the Director to cancel such registration.”.

(e) DEFINITIONS.—Section 45 of the Trademark Act of 1946 (15 U.S.C. 1127) is amended by striking the definition relating to the term “dilution”.

Mr. LEAHY. Mr. President, I am pleased that today the Senate is going to pass an important piece of legislation, the Trademark Dilution Revision Act, HR 683. The principal purpose of this law is to clarify Congress's intentions when it first passed the Federal Trademark Dilution Act over a decade ago.

In 2003, the Supreme Court decided the case of Moseley v. V Secret Catalogue, Inc. The Court held that trademark holders had to show actual harm, not the likelihood of harm, from dilution before they could seek injunctions. As an original author and sponsor of the act, I know firsthand that this is contrary to what Congress intended when it passed the dilution statute. What we did intend was to stop diluting before actual harm could be realized and the value of any reputable trademark debased.

H. R. 683 makes clear Congress's intent and corrects the law to provide that owners of famous trademarks can seek injunctions against anyone who attempts to use a mark that is likely to cause dilution. It also affords the court the ability to consider “all relevant factors” when determining whether a mark is “famous.” However, this legislation not intended to provide for injunctive or other relief against legitimate, third party trade in products manufactured under authority of the U.S. trademark owner of the distinctive, famous mark.

Furthermore, Senator HATCH and I were successful in including language that definitively shelters important constitutionally protected first amendment freedoms from being caught up in the liability net.

I thank Senators HATCH and SPECTER for their support in creating and pass-

ing this important bipartisan legislation.

Mr. FRIST. Mr. President, I ask unanimous consent that the committee-reported amendment be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment in the nature of a substitute was agreed to.

The bill (H.R. 683), as amended, was read the third time and passed.

ORDERS FOR THURSDAY, MARCH 9, 2006

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Thursday, March 9. I further ask consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then proceed to a period for the transaction of morning business with Senators being permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Mr. President, as we just heard, we were forced to file cloture on the lobbying reform bill. Under regular order that vote will occur on Friday morning unless and we intend to work out some other agreement.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:01 p.m., adjourned until Thursday, March 9, 2006, at 9:30 a.m.